entirely released from liability for subsequent partnership obligations by any change in the membership of the firm, because he contracted to be liable for the debts of the original firm only. *University of Cambridge* v. *Baldwin*, 5 M. & W. 580; *Byers* v. *Hickman Grain Co.*, 112 Ia. 451, 84 N. W. 500; *Dupee* v. *Blake*, 148 Ill. 453, 35 N. E. 867. See 14 HARV. L. REV. 627. However, if the guaranty shows the intention of the parties that it should survive changes in the partnership, the surety will continue liable for the obligations of the new firm. See *Backhouse* v. *Hall*, 6 B. & S. 507, 520; *Burch* v. *De Rivera*, 53 Hun 367, 369, 6 N. Y. Supp. 206, 207. Likewise, since a special guaranty is held unassignable, a change in the membership of a partnership which is the creditor of the principal, discharges the surety, unless the contrary intention of the parties appears. *Pemberton* v. *Oakes*, 4 Russ. 154; *Schoonover* v. *Osborne*, 108 Ia. 453, 79 N. W. 263; *Bennett* v. *Draper*, 139 N. Y. 266, 34 N. E. 791. In one case such contrary intention was found from the fluctuating nature of the firm. *Metcalf* v. *Bruin*, 12 East 400. In the present case the fact that the sureties were ignorant of the nature of the bank's ownership seems clearly to indicate their intention that it was a guaranty of the bank as an institution not as a partnership, and thus that the guaranty should survive any change in the firm. *Cf. Barclay* v. *Lucas*, 1 T. R. 291, note. See BRANDT, SURETYSHIP, 3 ed., § 138.

TRUSTS — FOLLOWING TRUST PROPERTY — CONFUSION OF TRUST FUNDS WITH TRUSTEE'S OWN PROPERTY. — A trust company mingled trust funds in its possession with its general assets. It thereupon became insolvent. The injured *cestuis* claim priority to the extent of the trust funds. *Held*, that no right to priority exists. *Commonwealth* v. *Tradesmen's Trust Co.* (Nos. 1, 2, 3), 95 Atl. 574, 577, 578 (Pa.).

"An abuse of trust can confer no rights on the party abusing it, nor on those who claim in privity with him." *Taylor* v. *Plumer*, 3 M. & Sel. 562, 574. Nor does equity any longer find a difficulty in following money into a larger sum in which it has been mingled. *Knatchbull* v. *Hallett*, 13 Ch. Div. 696; *National Bank* v. *Insurance Co.*, 104 U. S. 54. See A. W. Scott, "Right to Follow Money Wrongfully Mingled with Other Money," 27 HARV. L. REV. 125. It should make no difference that the sum in which the funds are mingled is the trustee's whole estate. Of course if the funds themselves have been expended the *res* is gone and the *cestui* can have no priority. *Bircher* v. *Walther*, 163 Mo. 461, 63 S. W. 691; *Metropolitan National Bank* v. *Campbell Commission Co.*, 77 Fed. 705. But after an improper mixture the trustee must show that the funds he has expended from the mass are the *cestui's* part of it. *Knatchbull* v. *Hallett*, *supra; Widman* v. *Kellogg*, 22 N. Dak. 396, 133 N. W. 1020. And if the funds have been paid into the estate and not paid out again, the *res* is there, and equity should follow it. *Harrison* v. *Smith*, 83 Mo. 210; *People* v. *City Bank of Rochester*, 96 N. Y. 32; *McLeod* v. *Evans*, 66 Wis. 401. See S. Williston, "Right to Follow Trust Property," 2 HARV. L. REV. 28, 36. See *contra*, *Empire State Surety Co.* v. *Carroll County*, 194 Fed. 593. Priority is here denied on the old ground that money has no earmarks. The necessary corollary is fearlessly applied: the *cestuis* are postponed to the insolvent's general depositors under a statute preferring depositors before ordinary creditors.

WILLS — PRESUMPTION OF SURVIVORSHIP — DISPOSITION WHERE TESTATOR AND PRINCIPAL BENEFICIARY DIE IN SAME DISASTER. — A husband and wife each named the other as principal beneficiary in their wills, each providing that if the other died first, their foster son should become the sole beneficiary. Both were frozen to death in a snowstorm, there being no evidence tending to show which died first. The next of kin now contest the foster son's

right to take under the wills. *Held*, that the foster son take. *Fitzgerald* v. *Ayers*, 179 S. W. 289 (Tex.).

It is well established in the common law that there is no presumption of survivorship or of simultaneous death where persons meet death in a common disaster. *Underwood* v. *Wing*, 19 Beav. 459; *Newell* v. *Nichols*, 12 Hun (N. Y.) 604. It is a fact to be proved by the claimant. *Wing* v. *Angrave*, 8 H. L. Cas. 182; *Newell* v. *Nichols*, *supra*. When the claimant cannot establish the survivorship, under the English view, the gift over fails and the property passes into the residuum, or by intestacy. *Elliott* v. *Smith*, 22 Ch. Div. 236; *Re Alston*, [1892] P. 142; *Wing* v. *Angrave*, *supra*. Precisely the same result is reached in this country, where the property is distributed as if the deaths were simultaneous. *Johnson* v. *Merithew*, 80 Me. 111; *Re Willbor*, 20 R. I. 126. In the United States, however, effect has been given, in construing a will providing for a gift over if the principal legatee "dies before I do," to the obvious intention of the testator that if, for any reason, the primary beneficiary cannot take the property with an effective power to dispose thereof, the gift over is to prevail. *Y. W. C. Home* v. *French*, 187 U. S. 401; *St. John* v. *Andrews Institute*, 191 N. Y. 254, 83 N. E. 981. This construction, even in cases where the claimant would take under one of two "twin" wills if either testator survived the other, has been refused in England, although forcefully urged by Lord Campbell. See dissenting opinion, *Wing* v. *Angrave*, *supra*, at 196. Under the American construction the defendant in the principal case takes without the necessity of establishing a survivorship. This seems obviously the only just result.

WITNESSES — PRIVILEGED COMMUNICATIONS: PHYSICIANS — WAIVER IN INSURANCE POLICY. — The plaintiff sued on a life insurance policy which was to become void if the insured died in the violation of law and in which the insured waived her statutory privilege as to communications with her physicians. The testimony of two attendant physicians that she died of an abortion was admitted. A statute provided that no physician should be allowed to disclose any information acquired in his professional attendance on patients. 3 MICHIGAN COMP. LAWS, § 10181. *Held*, that the waiver will not be given effect. *Gilchrist* v. *Mystic Workers of the World*, 154 N. W. 575 (Mich.).

The purpose of the statute in the principal case, which is to encourage recourse to physicians and free communication of symptoms, a subsequent waiver would not defeat. See 3 NEW YORK REVISED STATUTES (1836), 2 ed., p. 737; *Edington* v. *Mutual Life Ins. Co.*, 67 N. Y. 185, 194. See 4 WIGMORE, EVIDENCE, § 2380. Similar statutes in other states, also expressed as an absolute disqualification of the physician, have been construed as privileges of the patient which he may waive without restriction. *Adreveno* v. *Mutual, etc. Life Ass'n*, 34 Fed. 870 (C. C. Mo.). See *Penn. Mutual, etc. Co.* v. *Wiler*, 100 Ind. 92. For the general rule is that a privilege solely for the benefit of individuals may be waived by such individuals. See *State Trust Co.* v. *Sheldon*, 68 Vt. 259, 260, 35 Atl. 177, 178. And when the purpose of a statute can only be achieved by the suppression of probative evidence and hence of the truth, the operation of such statute should be strictly limited to the necessities of that purpose. Although no court has made the distinction, it, nevertheless, seems arguable that the waiver in the principal case, being prior to the consultation with the physician, would check the confidence that the statute was intended to foster. However, it is more than doubtful that the advantage of securing confidence in the few cases where disclosure would be so distasteful to the patient as to be deterrent, outweighs the disadvantage of suppression of evidence that the privilege unnecessarily entails. See *Renihan* v. *Dennin*, 103 N. Y. 573, 580, 9 N. E. 320, 322; *Connecticut Life Ins. Co.* v. *Union Trust Co.*, 112 U. S. 250, 254. See 4 WIGMORE, EVIDENCE, § 2380.